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11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 Cung Le, Nathan Quarry, Jon Fitch, Brandon  
14 Vera, Luis Javier Vazquez, and Kyle  
15 Kingsbury on behalf of themselves and all  
others similarly situated,

16 Plaintiffs,

17 vs.

18 Zuffa, LLC, d/b/a Ultimate Fighting  
19 Championship and UFC,

20 Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT ZUFFA, LLC'S  
MOTION TO SEAL ZUFFA'S  
REPLY IN SUPPORT OF  
ZUFFA'S MOTION FOR  
SUMMARY JUDGMENT (ECF  
NO. 614)**

**FILED UNDER SEAL**

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiffs file this brief in opposition to Zuffa LLC's Motion to Seal Zuffa's Reply in Support of Zuffa's Motion for Summary Judgment and Related Materials (ECF No. 614) (the "Motion to Seal" or "MTS"). As with its previous motions to seal, Zuffa fails to provide compelling reasons supported by specific factual findings to justify sealing the documents and information Zuffa asks the Court to seal.

Zuffa's Motion to Seal fails for four primary reasons.<sup>1</sup> First, Zuffa's Motion to Seal fails because the documents do not contain commercially sensitive information. Some documents or testimony refer to information that is public knowledge, or that is too old to be commercially sensitive. Disclosure of such documents or information will not put Zuffa at a competitive disadvantage, so there is no basis for sealing them.

Second, the presumed right of access of the named Plaintiffs, the Class members, the public, and the press, outweighs any alleged interest in confidentiality Zuffa may claim. This transparency interest is heightened in an antitrust class action such as this, where the rights and interests of a large number of UFC fighters are at stake and the alleged wrongdoing should not be concealed from public scrutiny.

Third, Zuffa fails to carry its burden of making a particularized showing for each document it seeks to file under seal that articulates compelling reasons to seal supported by specific factual findings. This failure, standing alone, represents a legally sufficient reason for denying Zuffa's Motion to Seal. Many of Zuffa's descriptions mischaracterize the nature of the materials it seeks to seal, claiming for example that documents contain "detailed financial information" when they contain no financial information at all.

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<sup>1</sup> Plaintiffs have made similar arguments in their prior oppositions to Zuffa's motions to seal. *See*, Plaintiffs' Opposition to Defendant Zuffa LLC's Motion to Seal Portions of Plaintiffs' Reply in Support of Plaintiffs' Motion for Class Certification and Related Materials, ECF No. 558; Plaintiffs' Opposition to Defendant Zuffa LLC's Motion to Seal Zuffa LLC's Motion for Summary Judgment and Related Materials, ECF No. 581; and Plaintiffs' Opposition to Defendant Zuffa, LLC's Motion to Seal Plaintiffs' Opposition to Zuffa, LLC's Motion for Summary Judgment And Related Materials, ECF No. 604. Plaintiffs hereby incorporate these opposition briefs into the instant Opposition as if they were fully set forth herein.

Fourth, Zuffa misuses the Federal Rules by selectively asking the Court to seal information that supports Plaintiffs' claims or casts Zuffa in a negative light, while freely revealing information that it believes supports its position or otherwise casts it in a positive light. Zuffa should not be allowed to misuse the Federal Rules as both a shield and a sword.

For these reasons and those presented below, this Court should deny Zuffa's Motion to Seal.

## II. LEGAL STANDARD

Courts in the Ninth Circuit maintain "a strong presumption in favor of access" to judicial records attached to dispositive motions, including motions for summary judgment. *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citation omitted). "A party seeking to seal a judicial record . . . bears the burden of overcoming this strong presumption by . . . articulat[ing] compelling reasons supported by specific factual findings . . . ." *Id.* at 1178 (citation omitted). "A litigant is required to make a particularized showing for each document it seeks to file under seal . . . ." *Collectors Coffee Inc. v. Blue Sunsets, LLC*, No. 2:17-cv-01252-JCM-PAL, 2017 U.S. Dist. LEXIS 96273, at \*6, n.1 (D. Nev. June 21, 2017) ("*Collectors Coffee*"). "An unsupported assertion of unfair advantage to competitors without explaining *how* a competitor would use the information to obtain an unfair advantage is insufficient." *Hodges v. Apple Inc.*, No. 13-cv-01128-WHO (WHO), 2013 U.S. Dist. LEXIS 164674, at \*4-5 (N.D. Cal. Nov. 18, 2013) ("*Hodges*") (italics added) (citation omitted). "The Ninth Circuit has rejected efforts to seal documents under the compelling reasons standard based on conclusory statements [that] the contents of the documents . . . are confidential and that, in general, their disclosure would be harmful to the movant." *Bartech Int'l, Inc. v. Mobile Simple Sols., Inc.*, No. 2:15-cv-02422-MMD-NJK, 2016 U.S. Dist. LEXIS 59852, at \*3 (D. Nev. May 5, 2016) (citations omitted) ("*Bartech*").

Moreover, "in class actions—where by definition some members of the public are also parties to the case—the standards for denying public access to the record should be applied with particular strictness." *Shane Grp., Inc. v. Blue Cross Blue Shield*, 825 F.3d 299, 305 (6th Cir. 2016) (citation omitted) ("*Shane*"). *Accord, Marsh v. First Bank of Del.*, No. 11-cv-05226-

WHO, 2014 U.S. Dist. LEXIS 4022, at \*4 (N.D. Cal. Jan. 13, 2014) (“*Marsh*”) (“In a class action, the public right of access to court documents is especially heightened.”). This is especially so in antitrust cases, where “the public’s interest is focused not only on the result, but also on the conduct giving rise to the case. In those cases, secrecy insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption.” *Shane*, 825 F.3d at 305 (citation omitted). “[E]ven where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason. The proponent of sealing therefore must analyze in detail, *document by document*, the propriety of secrecy, providing reasons and legal citations.” *Id.* at 305-06 (emphasis added; citation omitted). Sealing information in a class action is inappropriate when doing so would “interfere with the right of class members to make an informed decision about whether to object or opt out.” *Hunt v. VEP Healthcare*, No. 16-cv-04790-VC, 2017 U.S. Dist. LEXIS 139700, at \*3, n.1 (N.D. Cal. Aug. 22, 2017).

“[C]ompelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (citations omitted). “A trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *Elec. Arts, Inc. v. United States Dist. Ct. (In re Elec. Arts, Inc.)*, 298 F. App’x 568, 569 (9th Cir. 2008) (citation omitted). Parties “have an interest in keeping their detailed product-specific financial information secret . . . [when] they could suffer competitive harm if this information is made public.” *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (applying Ninth Circuit law). Courts will grant a party’s motion to seal where public disclosure would “cause it competitive disadvantage by permitting its competitors to exploit its trade secrets.” *Bartech*, 2016 U.S. Dist. LEXIS 59852, at \*5.

For the reasons discussed below, Zuffa fails to satisfy the compelling reasons standard.

### 1 III. ARGUMENT

#### 2 A. The Documents Do Not Contain Commercially Sensitive Information.

3 Many of the materials Zuffa asks the Court to seal simply do not contain confidential  
4 information. For example, Zuffa asks the Court to seal a portion of deposition testimony by  
5 Zuffa assistant general counsel Michael Mersch that quotes a 2010 email between Zuffa and a  
6 UFC fighter, stating, [REDACTED]

7 [REDACTED]  
8 [REDACTED] Reply Exh. 130, 358:1-8. Nothing more about the agreements is disclosed:  
9 the parties, subject matter, and terms of the referenced agreements remain undisclosed in the  
10 exhibit. Zuffa asserts that the testimony “contain[s] language from and a description of a  
11 highly confidential negotiation between Zuffa and an athlete,” and that “disclosing the terms  
12 of these agreements would put [Zuffa] at a disadvantage in future negotiations for similar  
13 agreements.” Motion to Seal at 9 (quoting *Icon-IP Pty Ltd. v. Specialized Bicycle Components,*  
14 *Inc.* No. 12-CV-03844-JST, 2015 WL 984121 at \*3 (N.D. Cal. Mar. 4, 2015)). This description  
15 mischaracterizes the document: *no terms are disclosed* in the testimony. The proposed  
16 redaction contains no commercially sensitive information.

17 In another example, Zuffa asks the Court to seal excerpts from the deposition of  
18 former Zuffa CEO Lorenzo Fertitta. MTS at 9, Reply Exh. 132. The redacted testimony states  
19 that a UFC fighter [REDACTED]

20 [REDACTED] Reply Exh. 132, 169:12-16. In other *unredacted*  
21 testimony Mr. Fertitta admits it is Zuffa’s practice to renegotiate fighter contracts before the  
22 last fight on the old contract has taken place: “[Q.] [D]id Zuffa generally seek to renew  
23 fighters’ contracts before the term was completed? A. Yes.” Reply Exh. 132, 163:15-18. Yet  
24 Zuffa asserts that “[d]isclosure of this highly confidential business strategy information would  
25 provide competitors with unfair and damaging insights into Zuffa’s highly confidential  
26 contracts and business practices.” MTS at 8-9. If Zuffa believed this were true it would have  
27 redacted Mr. Fertitta’s testimony confirming the practice. But it did not.

28 Additional examples of documents or redactions that do not contain commercially



1 sensitive information are described in Exhibit 1 to the Declaration of Kevin E. Rayhill (the  
 2 “Rayhill Declaration”), entitled “Zuffa’s Sealed Documents – Plaintiffs’ Arguments  
 3 Against.”

4 **1. The Documents Contain Information That is Public Knowledge.**

5 By definition, information that is available from public sources is not confidential. Yet  
 6 Zuffa repeatedly asks this Court to seal information that is already in the public domain. For  
 7 example, Zuffa asks the Court to seal portions of deposition testimony from Michael Mersch  
 8 that refer to a hypothetical example relating to Zuffa’s [REDACTED]  
 9 [REDACTED]. MTS at 8; Reply Exh. 115, 322:9-18, 323:1-13, 324:16-19, 325:10-328:3.  
 10 Zuffa claims that disclosure of the proposed redactions would “provide competitors with  
 11 unfair and damaging insights into Zuffa’s highly confidential contracts and business  
 12 practices.” MTS at 8. But Zuffa’s contractual terms, including [REDACTED]  
 13 [REDACTED] have been public knowledge for more than a  
 14 decade.<sup>2</sup> Indeed, former Bellator president Bjorn Rebney stated publicly that Bellator  
 15 “literally took [a] UFC contract, took it out of a PDF format and [] changed the UFC name to  
 16 Bellator and [] signed it” in an effort to match an offer from UFC for a Bellator fighter.<sup>3</sup> These  
 17 statements are further proof that Zuffa’s contract terms are public knowledge: other MMA  
 18 promoters clearly knew about them, and copied them in their own contracts. Zuffa’s contract  
 19 terms are public knowledge, and since other MMA promoters already freely admit that they

20 \_\_\_\_\_  
 21 <sup>2</sup> See Rayhill Decl., Exh. 2, Adam Swift, *Inside the Standard Zuffa Contract*, Sherdog.com, Oct.  
 22 31, 2007, available at [http://www.sherdog.com/news/articles/Inside-the-Standard-Zuffa-](http://www.sherdog.com/news/articles/Inside-the-Standard-Zuffa-Contract-9734)  
 23 *Contract-9734* (includes complete listing of all contract terms in a PAR, “the contract every  
 24 fighter has to sign to gain entry to the UFC”, including the Retirement Clause, the  
 25 Champion’s Clause, tolling provisions, the right to match period, and the exclusive  
 26 negotiating period, among other contract provisions). See also Rayhill Decl., Exh. 3. Jonathan  
 27 Snowden, *The Business of Fighting: A Look Inside the UFC’s Top-Secret Fighter Contract*, May  
 28 14, 2013, Bleacher Report, available at [https://bleacherreport.com/articles/1516575-the-](https://bleacherreport.com/articles/1516575-the-business-of-fighting-a-look-inside-the-ufcs-top-secret-fighter-contract#slide8)  
 business-of-fighting-a-look-inside-the-ufcs-top-secret-fighter-contract#slide8. See n.4, *supra*  
 (including a complete listing of all contract terms in a PAR, “the contract every fighter has to  
 sign to gain entry to the UFC”).

<sup>3</sup> See, Rayhill Decl., Exh. 4, Brian Hemminger, *Bjorn Rebney explains ‘key misunderstanding’ in UFC contract match for Eddie Alvarez*, mmamania.com, Jan. 9, 2013, available at  
[https://www.mmamania.com/2013/1/9/3853442/bjorn-rebney-lawsuit-eddie-alvarez-](https://www.mmamania.com/2013/1/9/3853442/bjorn-rebney-lawsuit-eddie-alvarez-bellator-mma-ufc-contract-match)  
 bellator-mma-ufc-contract-match.



base their own contracts (in part) on Zuffa's contractual terms, Zuffa would not be harmed by "disclosure" of these terms.

More examples of requests to seal or redact public information are described in Exhibit 1 to the Rayhill Declaration.

## 2. Many of the Documents are Too Old to Contain Trade Secrets.

Zuffa asks the Court to seal many documents that contain information that is too old to qualify as commercially sensitive information.<sup>4</sup> For example, Zuffa asks the Court to seal deposition testimony from Michael Mersch that references a February 5, 2010 email from Mersch to a fighter's manager. MTS at 9, Reply Exh. 130, 358:18. Even if the redacted section contained information that could at one time have been considered confidential—it does not—the eight-year old information is far too dated to hold any competitive value now.

Zuffa asks the Court to seal testimony about [REDACTED]. MTS at 13-14, Reply Exh. 129, 82:1-83:1. This information is likewise too old to hold any current competitive value. Zuffa also asks the Court to seal testimony relating to its acquisition of [REDACTED]. *Id.*, 150:8-12, 15-20. This information is also too old to hold any current competitive value.

There are more examples of documents Zuffa would withhold from public disclosure

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<sup>4</sup> See *Kenny v. Pac. Inv. Mgmt. Co. LLC*, No. C14-1987 RSM, 2018 U.S. Dist. LEXIS 112788, at \*8-9 (W.D. Wash. July 6, 2018) (denying motion to seal agreements and negotiations between defendant and clients, and client fees, as well as "more granular proprietary information, such as profitability figures," because the documents were "relevant to [the] case" and because the information was 4-5 years old and therefore "stale and no longer likely to offer a competitive advantage to [defendant's] competitors"); *Cen Com, Inc. v. Numerex Corp.*, No. C17-0560RSM, 2018 U.S. Dist. LEXIS 18698, at \*4 (W.D. Wash. Feb. 5, 2018) (denying without prejudice motion to seal where defendants had failed to show that 18-months old information was "not so stale as to no longer be commercially useful or harmful"); *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. 09-cv-01967 CW (NC), 2013 U.S. Dist. LEXIS 85375, at \*12 (N.D. Cal. June 17, 2013) (denying motion to seal where document was eight years old, and the defendant "fail[ed] to articulate what specific harm an outdated document will have on its current or future operations"); *PrimeSource Bldg. Prods. v. Huttig Bldg. Prods.*, No. 16 CV 11390, 2017 U.S. Dist. LEXIS 202748, at \*47 (N.D. Ill. Dec. 9, 2017) (holding that two-year-old vendor pricing information was not a trade secret because pricing had changed in the interim: "Information that is too old to hold any value loses any protection it would otherwise be entitled to as a trade secret").

1 that are too old to contain trade secrets. *See* Rayhill Decl., Exh. 1. Overall, none of the  
 2 documents Zuffa asks the Court to seal contains trade secrets. The documents either lack  
 3 information that could plausibly be characterized as commercially sensitive information, or  
 4 contain information that is already public knowledge, or that is too old to hold any current  
 5 competitive value. For these reasons, the motion to seal should be denied.

6 **B. The Interest of The Named Plaintiffs, Class Members, The Public, And**  
 7 **The Press in Access to The Documents Zuffa Seeks to Seal Outweighs**  
 8 **Any Purported Confidentiality Interest Zuffa May Hold in Those**  
 9 **Documents**

10 A party seeking to seal judicial records filed with a dispositive motion must “present  
 11 articulable facts identifying the interests favoring continued secrecy and [] show that these  
 12 specific interests [overcome] the presumption of access by outweighing the public interest in  
 13 understanding the judicial process.” *Kamakana*, 447 F.3d at 1181 (citations omitted). Courts  
 14 in the Ninth Circuit routinely deny requests to seal when the moving party fails to show that  
 15 the interest in sealing outweighs the interest of the named Plaintiffs, Class members, the  
 16 public, and the press in access. For example, the court in *Saint Alphonsus Med. Ctr. - Nampa,*  
 17 *Inc. v. Saint Luke’s Health Sys.*, No. 1:12-CV-00560-BLW, 2014 U.S. Dist. LEXIS 93985 (D.  
 18 Idaho July 3, 2014), denied a motion to seal expert testimony despite finding that—unlike  
 19 here—the testimony “reveals actual financial data such as revenue and overhead” and  
 20 contains “sensitive business information that could be damaging if revealed.” *Id.* at \*13. The  
 21 court held that because the expert testimony was “crucial to the public’s understanding” of  
 22 the defendant’s argument, there were no compelling reasons to seal the expert testimony. *Id.*  
 23 Similarly, in *eMove Inc. v. SMD Software Inc.*, No. CV-10-02052-PHX-JRG, 2012 U.S. Dist.  
 24 LEXIS 28164 (D. Ariz. Mar. 2, 2012), the court denied a motion to seal an expert report in its  
 25 entirety, even though the report contained “profit and loss information [that] is sensitive and  
 26 may constitute trade secrets.” 2012 U.S. Dist. LEXIS 28164, at \*8. The court held that the  
 27 moving party did not “adequately explain how this information provides it with a competitive  
 28 advantage.” In addition, the court held that “the expert report is central to the cause of action  
 because it purports to calculate the damages incurred by [the plaintiff] as a result of the

1 defendants' allegedly unlawful acts [so] the need for public access is at its peak." *Id.*

2 Here, Zuffa has made no attempt to show that its purported interest in sealing the  
3 documents outweighs the interest of the named Plaintiffs, the Class members, the public, and  
4 the press in disclosure.

5 **1. The Strong Presumption of Public Access to Judicial Records Is**  
6 **Heightened Where, As Here, The Alleged Unlawful Antitrust**  
7 **Violations Affect The Rights of A Large Class of Victims.**

8 "In a class action, the public right of access to court documents is especially  
9 heightened." *Marsh*, 2014 U.S. Dist. LEXIS 4022, at \*4. Public access is of even greater  
10 importance in antitrust actions, where "the public's interest is focused not only on the result,  
11 but also on the conduct giving rise to the case. In those cases, secrecy insulates the  
12 participants, masking impropriety, obscuring incompetence, and concealing corruption."  
13 *Shane*, 825 F.3d at 305 (citation omitted). Here, both conditions favoring increased  
14 transparency apply. Zuffa has not shown that its interest in confidentiality outweighs the  
15 public's interest in transparency.

16 Many of the documents Zuffa asks this Court to seal support Plaintiffs' claims in this  
17 litigation, and expose not just Zuffa's anticompetitive actions, but the intent behind those  
18 actions. For example, Zuffa asks the Court to seal deposition testimony from Plaintiffs' expert  
19 economist Dr. Hal Singer relating to the percentage of the market for fighter services  
20 foreclosed by Zuffa's contracts from 2007 to 2011, and the percentage of Zuffa's event  
21 revenues allocated to UFC fighters (wage share). MTS at 12-13, Reply Exh. 125, 269:20,  
22 270:14, 270:19, 270:22-24, 271:20-22, 293:8-9, 294:19, 295:2-3. Zuffa asserts that the  
23 testimony "reference[s] specific Zuffa financial information, including compensation and  
24 revenue information—expressed as wage share—and information derived from specific  
25 compensation and revenue information." MTS at 12. Zuffa alleges that this type of  
26 information "is properly filed under seal because of the 'proprietary nature of confidential  
27 financial information' and the fact that 'past information may be used to predict future  
28 business plans . . .'" MTS at 12-13. This description and justification for sealing  
mischaracterize Dr. Singer's testimony, creating the impression that the testimony contains

1 specific compensation and revenue information. It does not. Wage share references only the  
2 percentage of (a portion of) revenues paid as compensation. The testimony contains no  
3 specific information about the size of Zuffa's payroll or its revenues, nor could such specific  
4 information be inferred or reverse engineered from wage share. Zuffa has failed to show that it  
5 will be harmed by disclosure of this information.

6 More importantly, Dr. Singer's testimony regarding wage share and foreclosure share  
7 lies at the very heart of Plaintiffs' case. Dissemination of this information to the named  
8 Plaintiffs, the Class members, the public, and the press is crucial if they are to stay informed  
9 regarding the important issues at stake in this class action.

10 In another example, Zuffa asks the Court to seal testimony from Michael Mersch  
11 relating to an internal Zuffa email discussing [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 An important piece of Plaintiffs' case is that Zuffa keeps fighters locked up in long-  
17 term contracts in part by pressuring fighters to sign a new contract before the expiration of  
18 their old contract. One of the ways Zuffa applies pressure is to deny fighters bonuses and/or  
19 high profile fights the fighters might otherwise receive. Mr. Mersch's testimony supports this  
20 claim, and it casts a negative light on Zuffa's activities. Zuffa has not shown—and cannot  
21 show—how it would be unfairly harmed by disclosure of this testimony. The interest of the  
22 named Plaintiffs, the Class members, the public, and the press in gaining access to this  
23 significant information is strong, and outweighs any purported confidentiality interest Zuffa  
24 might assert.

25 Zuffa also asks the Court to seal deposition testimony from chief operating officer  
26 Lawrence Epstein relating to statements in a 2009 Confidential Information Memorandum  
27 created by Deutsche Bank on Zuffa's behalf and with Zuffa's active participation. MTS at 8,  
28 Reply Exh. 116, 90:11-20, 91:12-17, 92:20-21, 92:24, 93:1-2, 93:5-12, 93:17-22. The proposed

1 redactions relate to Zuffa's contract terms, but as discussed above, Zuffa's contract terms are  
2 widely available in the public domain. *See* n.2, *supra*. The information is also too old to hold  
3 any competitive value. Significantly, these statements strongly support Plaintiffs' case by  
4 showing that Zuffa itself felt that its contract terms [REDACTED]  
5 [REDACTED] and thereby foreclosing other MMA promoters from  
6 access to a necessary input into a successful MMA promotion. Disclosure of this information  
7 will not put Zuffa at a competitive disadvantage, and will expose Zuffa's anticompetitive  
8 actions to the light of day. The vital interest in access to judicial records for the named  
9 Plaintiffs, the Class members, the public, and the press outweighs Zuffa's interest in keeping  
10 this testimony confidential.

11 Zuffa has not shown and cannot show a valid legal basis for sealing these documents.  
12 "The mere fact that the production of records may lead to a litigant's embarrassment,  
13 incrimination, or exposure to further litigation will not, without more, compel the court to  
14 seal its records." *Kamakana*, 447 F.3d at 1179 (citation omitted). Conversely, the interest of  
15 the named Plaintiffs, Class members, the public, and the press in assessing whether Zuffa  
16 has—as Plaintiffs allege—used anticompetitive means to, among other things, lock its fighters  
17 into long-term exclusive contracts that prevent other MMA promoters from effectively  
18 competing for the fighters' services, is particularly strong in an antitrust class action such as  
19 this. Zuffa should not be allowed to control the Plaintiffs' and the public's access to these  
20 important documents based on its desire to conceal inculpatory evidence, especially when it  
21 has failed to articulate compelling reasons for doing so supported by specific factual findings.

22 These documents and many others cast a bright light on Zuffa's anticompetitive  
23 actions. Given the heightened interest of the named Plaintiffs, the Class members, the public,  
24 and the press in access to these materials, and Zuffa's failure to demonstrate that they have a  
25 confidentiality interest that outweighs the presumption of public access, Zuffa's Motion to  
26 Seal should be denied.

**C. Zuffa’s Descriptions And Justifications for Sealing Fail to Present Articulable Facts Showing Compelling Reasons to Seal Supported by Specific Factual Findings**

As in its other motions to seal, Zuffa has provided the Court with four conclusory and overly broad categories of documents it seeks to seal: documents relating to contracts, financial information, business strategy, or third-party information. While Zuffa has—for the first time, and in contrast to its prior motions to seal—at least addressed individually each document it asks the Court to seal, Zuffa has still failed to provide a legally sufficient, particularized showing for each document that satisfies the compelling reasons standard. Zuffa fails to adequately describe—as it must—the nature of the content of each document, the specific reason the document is confidential, or how it will be harmed by the document’s disclosure. It provides misleading characterizations that suggest the presence of detailed commercially sensitive information when no such information is present. These generic justifications do not carry Zuffa’s burden to show compelling reasons to seal, and represent an independently sufficient reason for denying Zuffa’s Motion to Seal.

Courts in the Ninth Circuit routinely deny motions to seal on this basis. *See e.g., In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, No. C 09-1967 CW, 2014 U.S. Dist. LEXIS 22233, at \*20 (N.D. Cal. Feb. 20, 2014) (denying motion to seal expert report because “[n]either Defendants nor the third parties have adequately explained how they would be harmed by the disclosure of this information.”).<sup>5</sup>

For example, Zuffa asserts that its proposed redaction to Plaintiffs’ First Amended Interrogatory Responses contains an “internal analysis of the length of Zuffa’s highly confidential contracts,” disclosure of which “would provide competitors with unfair and damaging insights into Zuffa’s highly confidential contracts and business practices.” MTS at

<sup>5</sup> *See also eMove*, 2012 U.S. Dist. LEXIS 28164, in which the court denied a motion to seal an expert report in its entirety, even though the report contained “profit and loss information [that] is sensitive and may constitute trade secrets.” *Id.* at \*8. The court held that the moving party did not “adequately explain how this information provides it with a competitive advantage.” In addition, the court held that “the expert report is central to the cause of action because it purports to calculate the damages incurred by [the plaintiff] as a result of the defendants’ allegedly unlawful acts [so] the need for public access is at its peak.” *Id.*

1 8, Reply Exh. 122. This mischaracterizes the proposed redaction, which simply quotes a 2013  
 2 Deutsche Bank memorandum, stating, [REDACTED]

3 [REDACTED]  
 4 [REDACTED] Reply Exh. 122 at 6. Any participant in the MMA  
 5 industry knows that Zuffa has the best fighters tied into long-term contracts. Zuffa's  
 6 purported justification for sealing fails to satisfy the compelling reasons standard.

7 **D. Zuffa Has Failed to Narrow Its Requests to Seal Third-Party Information**

8 Zuffa asks the Court to seal broad sections of its brief and supporting documents  
 9 under the guise of protecting third-party information. For example, Zuffa asks the Court to  
 10 seal several portions of the deposition testimony of Colin Neville relating to work the Raine  
 11 Group did for a third-party client. MTS at 17, Reply Exh. 118, 88:2-22, 89:13-20, 90:8-14,  
 12 92:18-93:2. Zuffa asserts the redacted portions should be sealed to protect the privacy and  
 13 confidentiality interests of each non-party. But Raine's role in seeking potential buyers for  
 14 Zuffa is unredacted in the same document. And any privacy interest the third-party client has  
 15 could easily be safeguarded by simply redacting its name. Zuffa has failed to narrowly tailor its  
 16 redactions.

17 Zuffa also asks the Court to seal testimony from Lawrence Epstein relating to  
 18 statements in the 2009 Deutsche Bank memorandum. MTS at 17, Reply Exh. 116, 90:11-20,  
 19 91:12-17, 92:20-21, 92:24, 93:1-2, 93:5-12, 93:17-22. Zuffa purports to base this request on the  
 20 confidentiality interest of third party Deutsche Bank. *Id.* But this testimony contains no  
 21 information about Deutsche Bank whatsoever, and certainly nothing that could be said to  
 22 implicate a privacy interest on Deutsche Bank's behalf. The clear beneficiary of sealing this  
 23 information would be Zuffa. Zuffa should not be allowed to misuse the Federal Rules to  
 24 influence public perception of the issues in this litigation.



1 **IV. CONCLUSION**

2 For the reasons stated above, this Court should deny Zuffa's Motion to Seal, with the  
3 exception of certain testimony or documents from third parties that Plaintiffs do not  
4 challenge.

5  
6  
7 Dated: November 16, 2018

Respectfully Submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of November, 2018, true and correct copies of the following documents were served via the District of Nevada's ECF system to all counsel of record who have enrolled in the ECF system:

- **PLAINTIFFS' OPPOSITION TO DEFENDANT ZUFFA, LLC'S MOTION TO SEAL ZUFFA'S REPLY IN SUPPORT OF ZUFFA'S MOTION FOR SUMMARY JUDGMENT AND RELATED MATERIALS (ECF NO. 611);**
- **DECLARATION OF KEVIN E. RAYHILL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT ZUFFA, LLC'S MOTION TO SEAL ZUFFA'S REPLY IN SUPPORT OF ZUFFA'S MOTION FOR SUMMARY JUDGMENT AND RELATED MATERIALS (ECF NO. 611), and related exhibits.**

By:

/s/ Kevin E. Rayhill